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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 9530]

RIN 1400-AD93

Visas: Visa Information Update Requirements under the Electronic Visa Update System (EVUS)

AGENCY: Department of State.

ACTION: Final rule with request for comments.

SUMMARY: The Department of State is coordinating with the Department of Homeland Security on instituting a requirement for nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category to provide required information to DHS after the receipt of his or her visa of a designated category.

DATES: This Final rule is effective on November 29, 2016. The Department of State will accept comments until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 1400-AD93, by one of the following methods:

- Electronic comments: Submit through the Federal eRulemaking Portal <http://www.regulations.gov> and search for docket number DOS-2016-0066
- Mail: Address all written submissions to Chief, CA/VO/L/R, U.S. Department of State, 600 19th St., NW, 12th Floor, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Kevin J. Earnest, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St NW, Washington, D.C. 20006 (202) 485-7588.

SUPPLEMENTARY INFORMATION: The Department of State (State) regulation on the revocation of nonimmigrant visas is at 22 CFR 41.122. State is amending 22 CFR 41.122 in support of a joint program with the Department of Homeland Security (DHS) that requires nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category to periodically provide required information to DHS after the receipt of his or her visa of a designated category.

The revised 22 CFR 41.122(b)(3) and the contemporaneous DHS rule amending 8 CFR part 215, subpart B (RIN 1651-AB08), are creating the Electronic Visa Update System (EVUS). As provided in 8 CFR part 215, subpart B, EVUS is an online information update system. Under EVUS, nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category are required to enroll in EVUS by providing information to DHS after the receipt of their visa of a designated category, and periodically thereafter. Successful enrollment in EVUS is evidenced by the receipt of a notification of compliance. Identified countries and designated visa categories are those countries and visa categories that the Secretary of Homeland Security, in consultation with the Secretary of State, has determined will be subject to EVUS enrollment requirements. Identified countries and designated visa categories will be announced in a notice published in the Federal Register. Failure to comply with EVUS after November 29, 2016, will result in an

automatic provisional revocation of the visa and will preclude travel to the United States on that visa. The visa will be automatically reinstated upon compliance with the EVUS requirements outlined in 8 CFR 215.24, as established by receipt of a notification of compliance. While, as discussed in the DHS rulemaking, individuals may enroll in EVUS prior to November 29, such enrollment is not required for travel to the United State prior to that date.

This rulemaking provides State the mechanism for visas to be automatically provisionally revoked, and the revocation to automatically be reversed and visas reinstated upon subsequent compliance with EVUS (22 CFR 41.122(b)(3)). The rule also makes other modifications to the visa revocation regulations consistent with the EVUS enrollment requirements.

As discussed in the contemporaneous DHS EVUS rule, DHS is exercising its authority under INA 214(a)(1) and 215(a)(1) (8 U.S.C. 1184(a)(1) and 1185(a)(1)) to require that nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category comply with the requirements in 8 CFR part 215, subpart B, and successfully enroll in EVUS by providing certain information to DHS after the receipt of their visas of a designated category as a condition of admission to the United States. Recognizing that holders of such visas who have not complied with the requirements in 8 CFR part 215, subpart B, will not be admitted to the United States under 8 CFR. 214.1(a)(3)(i), State is amending 22 CFR 41.122 to provide for automatic provisional revocation of the visas. Once the visa holder makes the required submission of biographic and other information and successfully

enrolls in EVUS, the revocation of the visa will automatically be reversed, and the visa will be valid for travel to the United States.

To implement EVUS, State is amending 22 CFR 41.122 and DHS is contemporaneously amending 8 CFR part 212, 214, 215, and 273.

Description of Regulation Changes:

In 22 CFR 41.122, paragraph (b) is now subdivided. New paragraph (b)(1) describes the force and effect of a provisional revocation generally. The paragraph also describes how a provisional revocation can be reversed and how the revocation authority contained in INA 221(i) (8 U.S.C. 1201(i)) is not limited by this paragraph. Paragraph (b)(2) contains the current language of paragraph (b) with the addition of a new header. New paragraph (b)(3) describes the new process of automatic provisional revocation of U.S. visas of designated categories held by nonimmigrant aliens in a passport issued by an identified country who fail to comply with EVUS after the receipt of his or her visa as required by 8 CFR 215.24.

Paragraph (c) is modified to make a notification exception to visa holders where visas have been automatically provisionally revoked under new paragraph (b)(3) of this section.

Paragraph (d) is modified to make an exception to the requirement of physically cancelling visas for visas that are automatically provisionally revoked by paragraph (b)(3).

Paragraph (e) remains unchanged.

REGULATORY FINDINGS

Administrative Procedure Act.

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the notice-and-comment rule making procedures set forth in 5 U.S.C. 553.

This final rule is also exempt from notice and comment requirements under the “good cause” exception set forth at 5 U.S.C. 553(b)(3)(B). This rule is critical because it improves the security of granting longer-length visas while also facilitating legitimate travel. Implementation of this rule as soon as possible is necessary to protect the national security of the United States and to prevent the harm that could be caused by the exploitation of longer-length visas.

Small Business Regulatory Enforcement Fairness Act of 1996.

Under Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804), a rule that is likely to result in an annual effect on the U.S. economy of \$100,000,000 or more, along with other criteria, is considered a major rule. State concludes that this rule does not meets the criteria for a major rule.

Regulatory Flexibility Act/Executive Order 13272: Small Business.

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, the Regulatory Flexibility Act does not apply to this rulemaking. See 5 U.S.C. 601(2).

The Unfunded Mandates Reform Act of 1995.

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before promulgating any general notice of proposed rulemaking, or any final rule for which a general notice of proposed rulemaking was published, that may result in an annual

expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. No such burden is being imposed by this rulemaking.

Executive Orders 12866 and 13563.

State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and certifies that the benefits of this rulemaking outweigh the costs. State does not consider this rule to be an economically significant regulatory action under Executive Order 12866. In addition, State has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

Executive Orders 12372 and 13132: Federalism.

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Immigration, Passports and visas, Students.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 41 is amended as follows:

PART 41 -- VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

2. In § 41.122:

- a. Revise paragraph (b);
- b. Add a sentence at the end of paragraph (c); and
- c. Revise paragraph (d).

The revisions and addition read as follows:

§ 41.122 Revocation of visas.

* * * * *

(b) *Provisional revocation--(1) General.* A provisional revocation is subject to reversal through internal procedures established by the Department of State. Upon reversal of the revocation, the visa immediately resumes the validity provided for on its face. Provisional revocation shall have the same force and effect as any other visa

revocation under INA 221(i), unless and until the revocation has been reversed. Neither the provisional revocation of a visa nor the reversal of a provisional revocation limits, in any way, the revocation authority provided for under INA 221(i), with respect to the particular visa or any other visa.

(2) *Pending visa eligibility determination.* A consular officer, the Secretary, or any Department official to whom the Secretary has delegated this authority may provisionally revoke a nonimmigrant visa while considering information related to whether a visa holder is eligible for the visa.

(3) *Automatic provisional revocation based on failure to comply with all EVUS requirements.* Visas held by individuals subject to the Electronic Visa Update System (EVUS) who have not complied with the conditions described in 8 CFR 215.24 or whose notification of compliance has expired or been rescinded are automatically provisionally revoked and are no longer valid for travel to the United States, without further notice to the visa holder. The automatic provisional revocation pursuant to this paragraph (b)(3) shall be automatically reversed upon compliance with EVUS requirements set out at 8 CFR part 215, subpart B, as confirmed by receipt of a notification of compliance. A visa revoked on grounds other than failure to comply with EVUS shall remain revoked, notwithstanding compliance with EVUS.

(c) * * *This paragraph (c) does not apply to provisional revocations under paragraph (b)(3) of this section.

(d) *Procedure for physically canceling visas.* Except for provisional revocations pursuant to paragraph (b)(3) of this section, a nonimmigrant visa that is revoked shall be canceled by writing or stamping the word “REVOKED” plainly across the face of the visa, if the visa is available to the consular officer. The failure or inability to physically cancel the visa does not affect the validity of the revocation.

* * * * *

Dated: October 13, 2016.

Michele Thoren Bond,
Assistant Secretary for Consular Affairs,
Department of State.

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